

U.S. Serial No. 09/599,371
Attorney Docket No. 101992-200

REMARKS

Reconsideration of this application is respectfully requested.

By virtue of this Amendment, claims 34 and 45 have been cancelled. Claims 60-65 are newly added. Support for the newly added claims may be found in cancelled claims 34 and 45 and the originally filed claims. Claims 56 and 60-65 are currently pending. Applicants submit that no new matter is added herein.

Claim Rejections 35 USC §103

Claims 34, 45 and 56 stand rejected under 35 USC §103(a) as allegedly being obvious over Wiese (US Patent No. 5,227,156) and Kooistra (US Patent 3852441). Claims 34 and 45 have been cancelled herein. Accordingly, the rejections as applied to claims 34 and 45 have been rendered moot.

Wiese discloses an antidandruff shampoo composition containing up to about 40% of surfactants, from about 0.1% to about 2.0% of zinc pyrithione, from about 1 to about 20 ppm of an isothiazolin-3-one and from about 0.001% to about 1.0% of a zinc compound (See Wiese, summary of the invention).

Wiese further discloses that zinc pyrithione is used in the composition for its antimicrobial potency and isothiazolin-3-one is a preservative to reduce or eliminate microbiological contamination during the storage of shampoos (See column 1, lines 12-16). Since zinc pyrithione is said to react adversely with a thiazolinone preservative to reduce the preservative's activity, Wiese teaches that a zinc compound can be added to a composition

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containing zinc pyrithione and isothiazolin-3-one preservative to keep the preservative active.

The compositions disclosed in Wiese mandate the presence of isothiazolin-3-one.

Applicants acknowledge that Wiese discloses a shampoo composition containing zinc pyrithione, 5-chloro-2-methyl-4-isothiazolin-3-one, zinc chloride and lauryldiethanolamide in example 1, however, Applicants respectfully submit that an organic amide, which is characterized by an acyl group ($-\text{CONH}_2$) attached to an organic group ($\text{R}-\text{CONH}_2$), has very different physical and chemical activities from an amine, which may be envisioned as being derived from ammonia by replacing one or more of the hydrogen atoms with alkyl group. Absent any specific teaching in the relied-upon art, a person skilled in the art would not be led or motivated to replace an alkanolamide in a composition with an alkanolamine. Applicants submit that Wiese does not teach or suggest any composition containing alkanolamine, much less the instantly claimed composition containing a pyrithione source, a zinc source and an alkanolamine as recited in instant claims 56 and 60-65.

Moreover, instant claim 56 and claims 60-65 recite a composition that is free of thiazolinone. Wiese does not teach or suggest such a thiazolinone-free composition. As discussed in detail above, Wiese teaches that a zinc compound can be used as a stabilizer to prevent iso-thiazolin-3-one degradation resulted from the adverse reaction of iso-thiazolin-3-one and zinc pyrithione. In view of this teachings, a person skilled in the art would not be led or motivated to add any zinc compounds to a composition that does not contain thiazolinone because there would not be any degradation of iso-thiazolin-3-one resulted from the adverse effect of zinc pyrithione to prevent.

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The Applicants of the invention surprisingly found that the presence of zinc compounds enhance the antimicrobial efficacy of pyrithione or pyrithione complex containing compositions (See instant application, page 18, lines 17-20). Wiese does not teach or suggest this usage of the zinc compounds or contemplate any other benefits of including the zinc compounds in a composition that does not contain thiazolinone. Therefore, Wiese does not disclose or suggest the instantly claimed invention. In view of the above discussion, the rejection over Wiese as applied to all the pending claims can't be maintained.

Kooistra discloses an antibacterial and antifungal composition containing heavy metal salts of 1-hydroxy-2-pyridinethione and either diphenylbismuth acetate, bismuth trichloride, bismuth formic iodide, or bismuth subgallate (See Abstract). While Kooistra does disclose a cream shampoo composition containing a coconut diethanolamine, Kooistra does not teach or suggest any composition containing a combination of a pyrithione salt and a zinc source, much less the instantly claimed composition. Since Kooistra does not specifically disclose any composition containing isothiazoline-3-one, a person skilled in the art would not be led or motivated to add a zinc compound to the Kooistra composition in view of the teaching of Wiese. This is so because there would not be any degradation of iso-thiazolin-3-one resulted from the adverse effect of zinc pyrithione to prevent.

In addition, Kooistra does not provide any guidance in favor of incorporating an alkanolamine into a shampoo composition. The mere disclosure that 0.5% coconut diethanolamine is employed in a cream shampoo composition containing 10 components does not lead or motivate a person skilled in the art to single out the coconut diethanolamine component and add it to a composition having totally different ingredients, for example, the composition disclosed by Wiese.

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Moreover, since the Wiese reference mandates the presence of isothiazolin-3-one, the combined teachings of Wiese and Kooistra would teach in favor of using isothiazoline-3-one in a composition. This actually teaches away from the instantly claimed compositions since the instantly claimed compositions are thiazolinone-free. Accordingly, Applicants respectfully submit that none of the cited references, either alone or in combination, teach or suggest the instantly claimed invention. Therefore, it is believed that the rejections under 35 U.S.C. § 103 can't be properly maintained.

Reconsideration of the claims remaining in this application, and an early allowance thereof, is respectfully requested.

Please apply any credits or charge any deficiencies to our Deposit Account No. 23-1665.

Respectfully submitted,
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